

Application No. 10/527,243  
Amendment dated December 9, 2008  
Reply to Office Communication of November 12, 2008  
Attorney Docket No. 4828-050784

### REMARKS

The disclosure was objected to because it included the use of the trademark “Velcro” therein. The specification has been amended to capitalize this term and provide the generic definition “hook and loop fastener” wherever it appears.

Claims 17-32 are pending in this application, with claim 17 being the sole independent claim. Claim 17 has been amended to include the feature that the device protects an irritable surface of the skin of the leg and that the protective part of the device is capable of fitting between the leg and the snug fit surface. Basis for this amendment can be found in the specification on page 1, lines 26-30; page 5, lines 3-10 and in Fig. 1. Claim 17 has also been amended to provide proper antecedent basis for the phrase “the protective part of the body” and to provide proper antecedent basis for “the body comprises a plastic” of claim 25, which depends from claim 17. Claim 30 has been amended to remove the trademark “Velcro tape”. No new matter has been added.

### ARGUMENTS

Claims 17-32 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 17, the Examiner objects to the phrase “the protective part” as lacking an antecedent basis. Claim 17 has been amended to define the body as having a protective part, to provide proper antecedent basis for this phrase. In claim 25, the Examiner objects to the phrase “the body made comprising plastic” as it depends from claim 17 which states that the body “only consists of the elastic material”. Accordingly, claim 17 has been amended to broadly state that the body comprises elastic material. With respect to claim 30, the Examiner objected to the use of the trademark “Velcro tape”. This phrase has been deleted from the claim.

Accordingly, it is respectfully requested that the rejection of claims 17-32 under 35 U.S.C. §112, second paragraph, be withdrawn in view of the amendments discussed above.

Claims 17-21, 23-25 and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,890,224 to Clark (hereinafter “Clark”). Claims 22, 26, 28, and 31-32 are rejected under 35 U.S.C. §103(a) as being obvious over the teachings of Clark.

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With respect to the novelty rejection of claims 17-21, 23-25 and 27, the Examiner alleges that Clark teaches each and every limitation of the claims including a device worn about the leg having a protective body wherein the protective body wholly encloses the leg, and the device also includes two support members on an inner side of the protective body. Applicant respectfully disagrees.

Claim 17 has been amended to include the feature that the device protects an irritable surface of the skin; that the device is located adjacent to the irritable surface of the skin and this protective part is capable of fitting between a leg and a snug fit surface. Clark is directed to a protective guard for an extremity of the body, such as a leg. This protective guard is used to protect the extremity from blows received during sports-related activities. The guard of Clark is not used for the purpose of protecting an irritable surface of the skin, nor is the guard of Clark capable of fitting between a leg and a snug fit surface for preventing this irritation. Accordingly, Clark fails to teach each and every limitation of claims 17-21, 23-25 and 27.

Clark also fails to render claims 22, 26, 28 and 31-32, and/or claims 17-21, 23-25 and 27 as being obvious under 35 U.S.C. §103(a) for the following reasons.

As stated above, Clark teaches protection of the body by means of a stiff member for receiving impacts incorporated in the protector that is placed around the leg. This stiff member often causes irritation of the skin. For example, when a user wears ski boots, the stiff member is located in the boots to provide protection from impacts and support to the ankle. These stiff members cause irritation to the wearer's skin. For this reason, the device of the invention has been developed to protect the wearer's skin from irritation by these stiff protective members. Accordingly, one having ordinary skill in the art at the time of the invention would not be motivated to incorporate the stiff protective member of Clark between a wearer's leg and a snug fit surface (such as a ski boot) to protect against irritation as it is this stiff protective member that actually causes the irritation. Furthermore, should one be motivated to incorporate this stiff protective member in between a leg and a snug fit surface (ski boot), the wearer's skin would become severely damaged by continuous leaning on the top part of the ski boot while the shin is leaning forward against this incorporated stiff member.

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With respect to claims 19, 20, 21 and 32, Clark fails to teach the specific features set forth in these claims such as providing a recess in the underside of the body for placing on the front side of a leg (claim 19); at least one support member for supporting a part of the leg adjacent to the member after placing around a leg (claim 20); two support members on the inner side of the body which are arranged substantially on either side of the front side of the body (claim 21); and markings for removing at least a part of the body therealong (claim 32).

It is respectfully requested that the rejection of claims 17-21, 23-25 and 27 under 35 U.S.C. §102(b) be withdrawn as Clark fails to teach each and every limitation of the claims. It is also requested that the rejection of claims 22, 26, 28 and 31-32 under 35 U.S.C. §103(a) be withdrawn as Clark fails to render these claims obvious.

Claims 29-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Clark in view of U.S. Patent No. 5,926,844 to Bear (hereinafter “Bear”). Clark fails to show hook and loop fastening material for fastening the protective body around the leg. Bear is cited as showing hook and loop fastening material for securing an elastic strap about a leg on the outside of a sock for locking a shin guard in its intended protective position. One having ordinary skill in the art would not look to Bear, which is directed to an elastic strap, when designing a fastening means in Clark as the Clark device comprises an elastic tubular material which fits about the leg and the protective shield is securely adhered to this material. Furthermore, Bear fails to overcome the deficiencies of Clark as discussed in detail above.

It is respectfully requested that the rejection of claims 29-30 under 35 U.S.C. §103(a) be withdrawn as the combination of Clark and Bear fails to render these claims obvious.

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**CONCLUSION**

Based on the foregoing amendments and remarks, reconsideration of the rejection and allowance of pending claims 17-32 is respectfully requested.

Respectfully submitted,

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